

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: July 14, 2008

Re: Request for Advice from Maine State Employees Association

The Ethics Commission received the attached request from Timothy L. Belcher, Executive Director of Maine State Employees Association (MSEA). In past election years, the MSEA has endorsed candidates for election and has sent literature to its members encouraging them to vote for the endorsed candidates. This year, the MSEA is considering whether it would be able to cooperate with other membership organizations to jointly create literature about political candidates that the participating organizations could distribute to their respective members. Each organization would pay for its share of the literature on a *pro rata* basis.

Special Status of Membership Communications

Under Maine campaign finance law, when a membership organization (such as a labor union or a trade association) spends money on a communication to its members relating to an election, its communications are exempt from the statutory definition of a campaign "expenditure." (21-A M.R.S.A. § 1012(3)(B)(3)) As a result, the expenditure does not qualify as an "independent expenditure." Organizations probably have a variety of motivations for sending communications to its members about political candidates, but from the perspective of Maine campaign finance law, the exception has two advantages for membership organizations:

- Membership communications do not trigger the payment of matching funds to any opponents of the endorsed candidates who are participating in the Maine Clean Election Act.
- The cost of the membership communication does not have to be reported to the Commission as an independent expenditure. Some organizations find this reporting requirement to be burdensome.¹ Rather, the cost is reported on a special form for membership communications (attached), which provides a similar amount of detailed disclosure.

¹ An organization making an independent expenditure of more than \$250 per candidate must file a financial report within 24 hours of making the expenditure and the report must contain a sworn statement that the expenditure was made independently of the candidate.

In its regulations, the Commission has adopted a definition of a “member” of a membership organization which is attached for your information.

Questions from the MSEA

Mr. Belcher submitted a June 19, 2008 letter asking for advice, and supplemented the information in his letter with a July 7 e-mail. He explains that the MSEA is considering cooperating with other membership organizations to jointly create a piece of campaign literature. Each organization would distribute the literature *only* to its members. Each organization would pay for its *pro rata* share of the printing and mailing expenses. In his July 7 e-mail, Mr. Belcher explains that either the names of the participating organizations could be included in the literature, or each organization could hand-stamp its name or other identifier on the literature distributed to its members.

I view the MSEA’s question as having two parts:

- (1) If the MSEA and other organizations jointly paid for the literature and mailed it to multiple groups of members, would the literature qualify as a membership communication?
- (2) Under 21-A M.R.S.A. § 1014(2), an organization other than a candidate’s campaign sending a communication that advocates for that candidate’s election must disclose in the communication the person who financed the communication. Usually, this is in the form of a statement at the bottom of the literature: “Paid for by _____. Not paid for or authorized by any candidate.” How would the MSEA and other organizations best satisfy this requirement?

For example, would it be acceptable to list all of the organizations in this disclosure since they all paid for the literature (e.g., “Paid for by the MSEA, Organization X, and Organization Y. Not paid for or authorized by any candidate.”)? Alternatively, could each organization hand-stamp the organization’s name or other identifier on those pieces of literature sent to their members?

Thank you for your consideration of the MSEA’s request for advice.



RECEIVED

JUN 23 2008

June 19, 2008

MAINE ETHICS COMMISSION

Jonathan Wayne
Executive Director
Maine Commission on Government Ethics and Election Practices
135 State House Station
Augusta, ME 04333

Re: FEC ADVISORY OPINION 2007-14

Dear Jonathan,

I am writing to elicit your views as to whether the FEC Advisory Opinion 2007-14 (attached) is consistent with Maine law governing membership communications.

The Opinion concerns the pooling of political communications among several unaffiliated membership organizations. The organizations sponsored joint live telephone conference calls with candidates that were open to members. Each organization paid for the pro-rata costs of the call, based on the number of members who participated. Since the costs were pooled, no organization paid for the communication to another's members. While none of the organizations endorsed the participating candidates, that fact was not treated as legally significant to the Opinion authors, and I believe is irrelevant to the conclusion reached. The FEC advised that the pooled expenditures did constitute membership communications, rather than public expenditures.

MSEA-SEIU Local 1989 is interested in pooling electoral communications with other unaffiliated membership organizations during the coming season. While we are unlikely to use the medium of a conference call, we believe that similar principles should apply to joint mailings or member canvasses. If the participating organizations confine the communications to their respective membership class, and pay for the costs of the communication on a pro rata basis, the communication should constitute a membership communication rather than a campaign expenditure or contribution. I assume that any printed material would need to include the disclaimers from each participating organization. Each organization would report its own portion of the pooled costs as an expenditure for member communications.

BRUCE L. HODSDON
President

GINETTE M. RIVARD
Vice President

TIMOTHY L. BELCHER
Executive Director

MAINE STATE EMPLOYEES
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mseaseiu@mseaseiu.org

Web Page: www.mseaseiu.org



Please let me know whether, in your view, this analysis is consistent with Maine law. Thank you for your consideration.

Sincerely

A handwritten signature in black ink, appearing to read 'Timothy Belcher', with a stylized, flowing script.

Timothy Belcher
Executive Director



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 25, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-14

Jan W. Baran, Esq.
Carol A. Laham, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Dear Mr. Baran and Ms. Laham:

We are responding to your advisory opinion request on behalf of the Associated Builders and Contractors, the National Federation of Independent Business, and the National Restaurant Association (collectively, the "Trade Associations") concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. Your request concerns a series of jointly sponsored live telephone conferences featuring presidential candidates, which will be made available simultaneously to the three Trade Associations' restricted classes.

The Commission concludes that the Trade Associations may sponsor the telephone conferences as proposed, provided that the Trade Associations split the costs of the conferences on a pro rata basis determined by restricted class participation (assuming it is possible to track such participation), or by other reasonable method (if it is not possible to track participation) to ensure that each trade association does not subsidize the costs of candidate appearances to a restricted class other than its own.

Background

The facts presented in this advisory opinion are based on your letter received on July 18, 2007, your telephone conversation with Commission staff on July 31, 2007, and your email received on August 2, 2007.

The Trade Associations are non-profit corporations organized as trade associations under Section 501(c)(6) of the Internal Revenue Code. The Trade Associations comprise incorporated members whose representatives are small business owners. There may be some overlap in membership among the Trade Associations, but not in large numbers.

The Trade Associations plan to host a series of live telephone conferences focusing on small business issues. The telephone conferences would be open to the "restricted class," as defined under the Act and Commission regulations, of each of the three Trade Associations. The three restricted classes would have access to the telephone conferences either by dialing into the telephone conference and providing a password or by receiving a telephone call connecting them to the telephone conference. Access to the telephone conferences will also be granted to members of the news media.

Each telephone conference will feature one presidential candidate. The Trade Associations will invite several Democratic and Republican presidential candidates in accordance with current polls, beginning with the most popular candidates. The Trade Associations will contact the candidates' campaigns to schedule each candidate's appearance, but do not contemplate coordinating with the candidates in advance of the conferences on any subject other than scheduling. The Trade Associations will offer each candidate a similar opportunity to participate in the conferences in terms of time and format.

The Trade Associations will not limit the content of any candidate's discussion during the telephone conferences in any manner. The candidates will be free to solicit contributions and to solicit campaign volunteers by asking conference participants to visit a website or call a telephone number. Candidates will also answer questions posed by members of the audience. The Trade Associations have decided not to endorse any of the candidates, to expressly advocate the election or defeat of any of the candidates in connection with the conferences, or to collect any contributions.

The Trade Associations will split the costs of the conferences and are open to cost splitting arrangements other than dividing the costs equally among themselves. The Trade Associations may be able to track restricted class participation and to split costs based on the number of restricted class members of each trade association who participates in the conferences.

Question Presented

May the Trade Associations jointly sponsor a series of telephone conferences featuring presidential candidates for the Trade Associations' restricted classes?

Legal Analysis and Conclusions

Yes, they may do so, provided that the Trade Associations split the costs of the conferences on a pro rata basis determined by restricted class participation (assuming it is

possible to track such participation), or by other reasonable method (if it is not possible to track participation) to ensure that each trade association does not subsidize the costs of candidate appearances to a restricted class other than its own.

The Act prohibits contributions and expenditures by a corporation in connection with a Federal election. *See* 2 U.S.C. 441b(a); 11 CFR 114.2(b). The terms “contribution” and “expenditure” are defined to include “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization” in connection with any Federal election. 2 U.S.C. 441b(b)(2); 11 CFR 114.1(a)(1); *see also* 2 U.S.C. 431(8)(A)(i) and (9)(A)(i); 11 CFR 100.52(a) and 100.111(a). The phrase “anything of value” includes goods or services provided without charge, or at less than the usual and normal charge. 11 CFR 100.52(d)(1) and 100.111(e)(1).

Under an exception to the prohibition on corporate contributions and expenditures in connection with a Federal election, an incorporated trade association may sponsor candidate campaign appearances, but only if: (1) the audience is limited to the trade association’s restricted class¹ and those employees of the corporation outside the restricted class who are necessary to administer the meeting; or (2) the audience is limited to the trade association’s employees and their families. *See* 2 U.S.C. 441b(b)(2)(A); 11 CFR 114.3(c)(2) and 11 CFR 114.4(b)(1). Other guests of the corporation who are being honored or speaking or participating in the event, and representatives of the news media, may also attend. *Id.*

Under your proposal, each trade association would use its general treasury funds to sponsor candidate appearances to its own restricted class. Because the Trade Associations would sponsor the same candidate to address their restricted classes simultaneously during the telephone conferences, each trade association must pay only the portion of the costs of the conferences incurred because of its restricted class’s participation, assuming it is possible to track such participation. You indicate that the Trade Associations *may* also be able to track restricted class participation and to split the costs based on the number of restricted class members of each Trade Association that participates in the conferences. If the Trade Associations split the costs of the conferences proportionally, as described in the preceding sentence, the Commission concludes that the proposed conferences come within the exemptions from the definitions

¹ An incorporated trade association’s restricted class for communication purposes is its members and executive or administrative personnel, and their families. 11 CFR 114.1(j). A trade association’s members include its noncorporate members and, in the case of corporate members, the individual corporate representatives with whom the trade association normally conducts the association’s activities. 11 CFR 114.8(h). Under Commission regulations, an incorporated trade association’s executive and administrative personnel are defined as individuals employed by the trade association who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities. 11 CFR 114.1(c). This definition consists of individuals who run the trade association’s business such as officers, other executives, and division and section managers; and individuals following the recognized professions, such as lawyers and engineers. Other classes of employees are excluded. *Id.*

of "contribution" and "expenditure" for corporate-sponsored candidate campaign appearances to the restricted class.²

The situation presented here is similar to that considered by the Commission in Advisory Opinion 1984-13 (National Association of Manufacturers). In that advisory opinion, the Commission concluded that the National Association of Manufacturers ("NAM"), a corporation, could host candidates as speakers at a conference for its restricted class and jointly sponsor the conference with another entity, the Dallas Study Group ("DSG"), an unincorporated, nonmembership entity. The Commission concluded that because NAM was funding candidate appearances to its restricted class only, the event fell within the scope of the exemptions from the definitions of "contribution" and "expenditure" for corporate-sponsored candidate campaign appearances to the restricted class, regardless of DSG's joint sponsorship.

Here, each trade association plans to host candidates as speakers at telephone conferences for its restricted class, and also plans to sponsor the events jointly with the two other Trade Associations. So long as the Trade Associations split the costs of the conferences on a pro rata basis according to the participation of each trade association's restricted class, or by other reasonable method, *see supra* footnote 2, thereby ensuring no trade association is subsidizing the costs of candidate appearances to a restricted class other than its own, then, like NAM's event, the proposed telephone conferences would come within the exception for corporate-sponsored candidate campaign appearances to the restricted class, regardless of the other Trade Associations' joint sponsorship.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)
Robert D. Lenhard
Chairman

² If it is not possible to precisely track restricted class participation and to split costs based on the number of restricted class members of each Trade Association that participates in the conferences, costs may be split by some other reasonable method calculated to closely approximate pro rata participation.

Wayne, Jonathan

From: Tim Belcher [tim.belcher@mseaseiu.org]
Sent: Monday, July 07, 2008 7:27 PM
To: Wayne, Jonathan
Cc: Lavin, Paul; Brown, Jeremy J
Subject: RE: Follow-Up Questions

There are no specific plans at this point, and it is unclear whether any organizations will actually use this vehicle if it is approved, but let me at least narrow down a hypothetical situation to work with. For that hypothetical, let's assume the following answers:

1. Would the joint mailing include endorsements from all of the membership organizations involved?

Answer: The flier could either (1) list the participating organizations, or (2) include a statement to "vote for X" but with a hand-stamped organizational identifier for the organization the recipient belongs to. Option #1 is easier, but option #2 removes the possible objection that an organization is arguably advocating to persons who are not its own non-members. See the response to #3 below.

2. Do you anticipate that both the printing and mailing costs would be joint expenses?

Answer: yes, but I'm not sure why it would make a difference legally.

3. In the third paragraph of your June 19 letter, you wrote: "I assume that any printed material would need to include the disclaimers from each participating organization." Do you have in mind something along the lines of: "Paid for by the MSEA, Organization X, and Organization Y [with addresses]. Not authorized by any candidate."

Answer: I prefer using the approach your question contemplates, but recognize that a member of Organization Y is being informed that urged two organizations he or she does not belong to are also supporting the candidate. I believe that this is permissible since the pro-rated expenditure for that communication is being borne by Organization Y on behalf of its own members. The other two organizations haven't spent any money communicating their views to that particular non-member recipient, so they have not made an expenditure to communicate with that individual.

4. Can the Commission assume for the purposes of the advice, that the communication will be received only by the members of the communications (except for maybe a small number of stray copies) and there's not an intention to distribute it to other voters?

Answer: We are talking about communications that would be restricted to the organization's membership class. Under federal law, that class includes the actual member and his or her immediate family, plus executive or managerial employees of the organization. There is no intent to communicate with other voters.

Please let me know if I can help narrow the question further.

-----Original Message-----

From: Wayne, Jonathan [mailto:Jonathan.Wayne@maine.gov]
Sent: Monday, July 07, 2008 4:08 PM
To: Tim Belcher
Cc: Lavin, Paul; Brown, Jeremy J
Subject: Follow-Up Questions

In order to assist the Commission staff in framing the issue for our Commission members I have a few more questions about the anticipated joint mailings. I realize that some plans may not be final yet.

1. Would the joint mailing include endorsements from all of the membership organizations involved?

2. Do you anticipate that both the printing and mailing costs would be joint expenses?

7/10/2008

3. In the third paragraph of your June 19 letter, you wrote: "I assume that any printed material would need to include the disclaimers from each participating organization." Do you have in mind something along the lines of: "Paid for by the MSEA, Organization X, and Organization Y [with addresses]. Not authorized by any candidate."
4. Can the Commission assume for the purposes of the advice, that the communication will be received only by the members of the communications (except for maybe a small number of stray copies) and there's not an intention to distribute it to other voters?

Thank you.

21-A §1012. Definitions

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21-A §1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 161, §6 (NEW).]

1. Clearly identified. "Clearly identified," with respect to a candidate, means that:

- A. The name of the candidate appears; [1985, c. 161, §6 (NEW).]
- B. A photograph or drawing of the candidate appears; or [1985, c. 161, §6 (NEW).]
- C. The identity of the candidate is apparent by unambiguous reference. [1985, c. 161, §6 (NEW).]

[1985, c. 161, §6 (NEW) .]

2. Contribution. The term "contribution:"

A. Includes:

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
- (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
- (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and [1995, c. 483, §3 (AMD).]

B. Does not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$100 with respect to any election;

- (3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;
- (4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;
- (4-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;
- (5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a state party committee to its employees for the following purposes:
 - (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
 - (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; or
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate. [2007, c. 443, Pt. A, §3 (AMD).]

[2007, c. 443, Pt. A, §3 (AMD) .]

3. Expenditure. The term "expenditure:"

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and
- (4) A payment or promise of payment to a person contracted with for the purpose of supporting or opposing any candidate, campaign, political committee, political action committee, political party,

referendum or initiated petition or circulating an initiated petition; and [2005, c. 575, §2 (AMD) .]

B. Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate or candidate's immediate family;
- (1-A) Any communication distributed through a public access television station if the communication complies with the laws and rules governing the station and all candidates in the race have an equal opportunity to promote their candidacies through the station;
- (2) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$100 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;
- (5-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;
- (6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state or county office;
- (7) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (8) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election campaign;
- (9) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (10) Compensation paid by a state party committee to its employees for the following purposes:
 - (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
 - (c) Coordinating campaign events involving 3 or more candidates;
- (10-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (11) Campaign training sessions provided to 3 or more candidates;
- (11-A) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes; or
- (12) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider. [2007, c. 443, Pt. A, §4 (AMD) .]

21-A §1019-A. Reports of membership communications

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21-A §1019-A. Reports of membership communications

Any membership organization or corporation that makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate shall report any expenses related to such communications aggregating in excess of \$50 in any one candidate's election race, notwithstanding the fact that such communications are not expenditures under section 1012, subsection 3, paragraph A. Reports required by this section must be filed with the commission on forms prescribed and prepared by the commission and according to a reporting schedule that the commission shall establish by rule. [2001, c. 465, §2 (NEW).]

SECTION HISTORY

2001, c. 465, §2 (NEW).

21-A §1014. Publication or distribution of political communications

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21-A §1014. Publication or distribution of political communications

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. A communication financed by a candidate or the candidate's committee that is made through a broadcasting station is not required to state the address of the candidate or committee that financed the communication.

[2007, c. 443, Pt. A, §9 (AMD) .]

 **2. Not authorized by candidate.** If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 10-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

[2003, c. 510, Pt. F, §1 (AMD); 2003, c. 599, §15 (AFF) .]

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

[2007, c. 443, Pt. A, §9 (AMD) .]

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

[2007, c. 443, Pt. A, §9 (AMD) .]

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a cause to be voted upon at referendum. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee.

[1991, c. 839, §9 (NEW) .]

3-B. Newspapers. A newspaper may not publish a communication described in subsections 1 to 2-A without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

4. Enforcement. An expenditure, communication or broadcast made within 20 days before the election to which it relates that results in a violation of this section may result in a civil fine of no more than \$200. The person who financed the communication or who committed the violation shall correct the violation within 10 days after receiving notification of the violation from the commission. An expenditure, communication or broadcast made more than 20 days before the election that results in a violation of this section may result in a civil fine of no more than \$100 if the violation is not corrected within 10 days after the person who financed the communication or other person who committed the violation receives notification of the violation from the commission. If the commission determines that a person violated this section with the intent to misrepresent the name or address of the person who made or financed the communication or whether the communication was or was not authorized by the candidate, the commission may impose a fine of no more than \$5,000 against the person responsible for the communication. Enforcement and collection procedures must be in accordance with section 1020-A.

[2007, c. 443, Pt. A, §9 (AMD) .]

5. Telephone calls. Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 21 days before a primary election or the 35 days before a general election must clearly state the name of the person who made or financed the expenditure for the communication, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure.

[2007, c. 443, Pt. A, §9 (AMD) .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1987, c. 188, §17 (AMD). 1989, c. 504, §§5,6,31

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. **Act.** "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.
2. **Association.** "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.
3. **Campaign Deficit.** "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
4. **Campaign Surplus.** "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].
5. **Candidate.** "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§1(5)], and includes individuals running for office as a write-in candidate.

INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21-A, chapter 13, subchapter II [§1013-A].

6. **Certified Candidate.** "Certified candidate" has the same meaning as in the Act [§ 1122(1)].
7. **Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, §12004-G, subsection 33, and 1 M.R.S.A. §1001 *et seq.*
8. **Contribution.** "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(2)].

9. **Election.** "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.
10. **Expenditure.** "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(3)].
11. **Fund.** "Fund" means the Maine Clean Election Fund established by the Act [§1124].
12. **In-Kind Contribution.** "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.
13. **Member.** A "member" of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization's invitation to become a member, and either:
 - A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or
 - B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or
 - C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization's board, budget, or policies.

Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.
14. **Nonparticipating Candidate.** "Nonparticipating candidate" has the same meaning as in the Act [§1122(5)].
15. **Participating Candidate.** "Participating candidate" has the same meaning as in the Act [§1122(6)].
16. **Qualifying Contribution.** "Qualifying Contribution" has the same meaning as in the Act [§1122(7)].

**2008 CAMPAIGN FINANCE REPORT****MEMBERSHIP ORGANIZATION OR CORPORATION COMMUNICATIONS****MEMBERSHIP ORGANIZATION OR CORPORATION**Name _____
(full name of organization or corporation)

Mailing address _____

City, zip code _____ Telephone _____

INSTRUCTIONS:

Any membership organization or corporation that makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate shall report any expenses related to such communications aggregating in excess of \$50 in any one candidate's election race. These expenses are not "independent expenditures" for the purpose of computing matching funds under the Maine Clean Election Act. "Expressly advocate" and "clearly identified" are defined in Chapter 1, Section 8(2) of the Commission's Rules (available on the Commission website). Reports may be faxed to the Commission, provided that the original is received within 5 days after the fax.

FILING SCHEDULE (check applicable report below):

	Report Type	Due Date	Reporting Period
<input type="checkbox"/>	11-Day Pre-Primary	May 30, 2008	January 1, 2008 – May 27, 2008
<input type="checkbox"/>	42-Day Post-Primary	July 22, 2008	May 28, 2008 – July 15, 2008
<input type="checkbox"/>	11-Day Pre-General	October 24, 2008	July 16, 2008 – October 21, 2008
<input type="checkbox"/>	42-Day Post-General	December 16, 2008	October 22, 2008 – December 9, 2008
<input type="checkbox"/>	If this is an amendment to a filed report, check this box and indicate the report being amended.		

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE, IT IS TRUE, CORRECT AND COMPLETE.

Signature of Authorized Officer or Employee _____

Date _____

Schedule B-1

CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subject of the communication.
- If more than one candidate was the subject of the expense, allocate the expense among the candidates.

Office sought by candidate (including district #)	Candidate's name	Indicate whether the expense was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
Total expenses for all candidates this reporting period. <i>This amount should equal the total expenses listed on Schedule B-2, Line C. ⇒</i>			

Schedule B-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expense type, and amount of each expense.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expense type.

Expense Types			
LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)

Date of payment or obligation	Payee, address, zip code	Expense type	✓	Amount
A. Expenses for this page ⇒				
B. Total for all other Schedule B-2 pages (if any) ⇒				
C. Total expenses for this reporting period (A+B). <i>This amount should equal the total amount for all candidates listed on Schedule B-1.</i> ⇒				